

AO 106 (Rev. 04/10) Application for a Search Warrant

UNITED STATES DISTRICT COURT

for the
District of New Mexico

FILED
UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO

MAR 24 2025

MITCHELL R. ELLERS
CLERK OF COURT

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
THE PERSON OF JOSIAH O., A JUVENILE,
CURRENTLY INCARCERATED

Case No.

25-527 MR

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, which attached and incorporated fully by reference herein

located in the _____ District of _____ New Mexico _____, there is now concealed (identify the person or describe the property to be seized):
See Attachment A, which attached and incorporated fully by reference herein.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

| Code Section | Offense Description |
|---------------------|---|
| 18 USC 922(q)(3)(A) | Discharge of a Firearm in a School Zone |

The application is based on these facts:
See Attachment

- ☐ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Special Agent David Gabriel

Printed name and title

Sworn to before me and signed in my presence.

- by telephone. JHR

Date: March 24, 2025

City and state: Las Cruces, NM

Judge's signature

U.S. Magistrate Jerry H. Ritter

Printed name and title

Attachment A
Persons to be Searched

Josiah D Ontiveros
DOB: 07/17/2009

Attachment B
Particular Things to be Seized

- DNA Samples in the form of buccal swabs, taken from the persons described above

AFFIDAVIT IN SUPPORT OF APPLICATION FOR A SEARCH WARRANT

I, David S. Gabriel, a Special Agent with the Federal Bureau of Investigation (FBI), being duly sworn, depose and state as follows:

1. I have been employed as a Special Agent of the FBI since May 2018. I am classified, trained, and employed as a federal law enforcement officer with statutory arrest authority charged with conducting criminal investigations of alleged violations of federal criminal statutes, including Title 18 of the United States Code. I am currently assigned to the Albuquerque Field Office, Las Cruces Resident Agency, New Mexico. Prior to my current position, I was employed for six years as an analyst and operations officer in a federal intelligence service. I am currently assigned to investigate violations of federal law, including violent crimes against children and crimes occurring on Indian reservations.

2. During my tenure with the FBI, I have received formal and informal training in conducting a variety of criminal investigations. I have participated in the execution of search warrants and seized evidence of these violations, conducted surveillance, and arrested the perpetrators of these crimes. I have conducted hundreds of interviews, to include witness, subject, and victim interviews.

3. The information contained herein is based upon my own investigations as well as information supplied to me by other duly sworn law enforcement officers, and does not contain all information known by me, only facts for consideration of probable cause.

4. This Affidavit is made in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the person of Josiah O., a juvenile, to include the collection of buccal swabs, which are potential evidence of an act of juvenile delinquency as defined in 18 U.S.C. § 5032 by violating Title 18, United States Code, Sections 922(q)(3)(A).

There is probable cause to search this person, further described in Attachment A, for evidence of this crime as further described in Attachment B.

Relevant Statutes

5. Title 18 U.S.C. § 922(q)(3)(A) in relevant part states, "Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone."

Probable Cause

6. The following information was provided to me by FBI and Las Cruces Police Department personnel with knowledge of the investigation. Additionally, I have assisted with other facets of this investigation, to include witness interviews and administrative functions, and am therefore familiar with its progress.

7. On March 21, 2025, Las Cruces Police Department (LCPD) officers and detectives responded to a shots fired call at Young Park located at 850 S. Walnut Street, Las Cruces, NM. FBI learned from LCPD detectives that three victims were deceased, and an additional fifteen victims were being treated for injuries. Multiple shell casings were recovered from the scene. The calibers of the casings recovered from the scene include 9mm, .40 S&W, and .45 ACP. Based on interviews conducted, I learned that LCPD detectives identified Josiah O. as a suspected shooter during the incident based on witness statements and photographs taken from the scene.

8. During my own portion of this investigation, I spoke with two eyewitnesses with firsthand knowledge who told me that Josiah ("JoJo") was one of the shooters. Specifically, one eyewitness told me that Josiah was shooting at another group at the auto meet, specifically identifying him as shooting at one of the individuals killed at the scene. He also told me that after

Josiah had escaped the scene, he and another shooter said words to the effect of “what if we killed them?” in reference to the people they had shot.

9. The other eyewitness I spoke to told me Josiah “walked down” this same deceased individual. I learned from this eyewitness that “walked down” refers to the execution of an individual on the ground by a standing executioner. This eyewitness also re-enacted what they saw, namely Josiah standing over one of the decedents and shooting them. The shooter said Josiah was armed with a pistol, possibly a Glock, and used it for the shooting.

10. Law enforcement has thus far recovered three Glock firearms believed to be associated with the shooting. Based on my training and experience, and in consultation with trained Special Agents of the Federal Bureau of Investigation (FBI), I am aware that Glock firearms are not manufactured in the state of New Mexico. Available information indicates Glock firearms are currently manufactured in the country of Austria or the state of Georgia. Therefore, at least some of these firearms traveled in interstate commerce in order to be present in the state of New Mexico.

11. FBI SAs attempted a custodial interview of Josiah but he invoked his right to an attorney.

12. 18 USC § 921(a)(26) states, in relevant part, “The term “school zone” means— (A) in, or on the grounds of, a public, parochial or private school; or (B) within a distance of 1,000 feet from the grounds of a public, parochial or private school. I have reviewed open-source map data and observed that Young Park is located within 1000 feet of Lynn Middle School, address 950 S. Walnut St, Las Cruces, NM 88001, and is in fact directly across Nevada Avenue from this school. More specifically, based on a review of property records, it appears that from the approximate location of the shooting to the property line of the school is approximately 350 feet. Below is a Google Maps overhead image of Young Park in relation to Lynn Middle School. The red circle

indicates the approximate location of the shooting.



13. I am aware that on March 21 and 22, 2025, Josiah was 15 years old and therefore a juvenile.

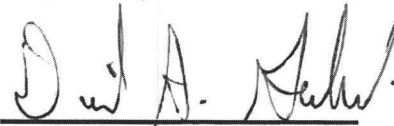
14. I know from my training and experience that DNA material can be found in human tissue, to include cells taken from the inside of the cheek via a buccal swab. I also know that DNA can be recovered from the surfaces of objects handled by humans, such as firearms. Further, I know that DNA comparison testing, such as testing a swab from a firearm for DNA and matching it to a person, requires a known sample from the suspected offender in order to complete the comparison examination.

Conclusion

15. Based on the foregoing, there is probable cause to believe that Josiah committed acts of juvenile delinquency as defined in 18 U.S.C. § 5032 by violating 18 U.S.C. § 922(q)(3)(A), namely discharge of a firearm in a school zone on March 21, 2025. There is in addition probable cause that DNA taken from this individual will match DNA collected from these firearms and serve as evidence of these crimes.

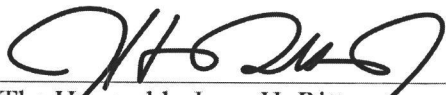
16. Assistant United States Attorneys Ry Ellison and Maria Armijo approved prosecution in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. S. Gabriel", written over a horizontal line.

David S. Gabriel
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me this 24th day of March 2025.

A large, stylized handwritten signature in black ink, written over a horizontal line.

The Honorable Jerry H. Ritter
United States Magistrate Judge